JAMES M. CHUDNOW

IBLA 82-521 Decided April 30, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive lease offer U-48918.

Affirmed in part; vacated and remanded in part.

1. Mineral Leasing Act: Generally--Mineral Leasing Act: Combined Hydrocarbon Leases--Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Lands Subject to--Tar Sands: Generally

   The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

2. Mineral Leasing Act: Generally--Mineral Leasing Act: Combined Hydrocarbon Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Competitive Leases--Tar Sands: Generally

   An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable

only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

3. Oil and Gas Leases: Applications: 640-acre Limitation

Where a noncompetitive offer to lease covers more than 640 acres of land available for leasing at the time the offer is made, the offeror has complied with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for noncompetitive leasing before lease issuance and the remaining land involves less than 640 acres.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

James M. Chudnow has appealed the February 17, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which rejected his noncompetitive over-the-counter oil and gas lease offer U-48918 because most of the land applied for was situated within the San Rafael Swell designated tar sand area, which may not be leased noncompetitively, and the remaining land included less than 640 acres, contrary to 43 CFR 3110.1-3(a).

The BLM decision states that on November 26, 1980, the Secretary of the Interior directed the Utah State Office to halt issuance of oil and gas leases in designated tar sand areas until a determination was made that leasing could resume. By notice in the Federal Register, dated January 12, 1981, the Department determined that the San Rafael Swell designated tar sand area was subject to the leasing provisions of the Mineral Lands Leasing Act, as amended, 30 U.S.C. §§ 226, 241 (1976). 46 FR 6077 (Jan. 12, 1981). Appellant filed his noncompetitive lease offer on May 19, 1981. The offer included both secs. 27 and 34, T. 24 S., R. 11 E., Salt Lake meridian, which are within the San Rafael Swell tar sand area, and secs. 18 and 19, T. 24 S., R. 12 E., Salt Lake meridian, which are not.

[1, 2] Effective November 16, 1981, the Combined Hydrocarbon Leasing Act, P.L. 97-78, 95 Stat. 1070, amended section 17(b) of the Mineral Lands Leasing Act, 30 U.S.C. § 226(b) (1976), to require that lands within "special tar sand areas" be leased by competitive bidding. 95 Stat. 1070-71. Under P.L. 97-78, the term "special tar sand area" is defined to mean an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800-801) and January 21, 1981 (46 FR 6077-78) as containing substantial deposits of tar sand. Thus, lands in the San Rafael Swell tar sand area designated in the January 21, 1981, order may only be leased competitively as of November 16, 1981.

Appellant argues that his offer should be accepted because it was filed on May 19, 1981, 6 months prior to the November 16, 1981, effective date of P.L. 97-78. He also contends that his offer should not be rejected as to the land not in the tar sand area since it was reduced to less than 640 acres only because of the retroactive effect being given by BLM to P.L. 97-78 and thus was not in violation of 43 CFR 3110.1-3(a) at the time it was submitted.

It is well established that an offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the land is included in a special tar sand area, and is thus leasable only through competitive bidding pursuant to the Act. Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (1982), and cases cited therein.

[3] Departmental regulation 43 CFR 3110.1-3(a) provides:

> § 3110.1-3 Acreage limitation.
>
> (a) * * * No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

In examining offers to determine whether they meet this 640-acre requirement, the key is whether the lands in an offer were available for leasing at the time the offer was made. The Department has consistently distinguished between two situations: one, where more than 640 acres of the land covered by an offer to lease were available for leasing at the time the offer was made and some later become unavailable; and the other, where less than 640 acres of the land covered by an offer were actually available for leasing at the time the offer was made, but other surrounding land was available for leasing. In the former case, BLM may issue a lease of less than 640 acres because the offeror has complied with the acreage requirement in making the offer but the lands subsequently have become unavailable. Melvin Wolf, 43 IBLA 128 (1979); Eugene J. Bernardini, 62 I.D. 231 (1955). In the latter case, the Department has ruled that the offer does not meet the regulatory requirement and must be rejected in its entirety. Nova L. Dodgen, 54 IBLA 340 (1981); J. Penrod Toles, 68 I.D. 285 (1961); Janis M. Koslosky, 66 I.D. 384 (1959).

In appellant's case, all of the land designated in his offer (which totaled more than 640 acres) was available for leasing at the time he submitted the offer. Therefore, BLM should have issued a lease for the land not within the tar sand area, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is affirmed as to the land included within the San Rafael Swell designated tar sand area, and vacated as to the remaining land applied for.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge